CHAPTER 2. ENVIRONMENTAL COMPLIANCE STRATEGY

INTRODUCTION

This chapter describes a general strategy for complying with the various environmental processes to which CALFED actions will be subject. To the fullest extent practicable, compliance with NEPA and CEQA should be integrated with the requirements of other regulatory processes, such as those of the National Historic Preservation Act (NHPA), the federal Endangered Species Act (FESA), the California Endangered Species Act (CESA), and Section 404 of the Clean Water Act (CWA). This strategy includes general methods for achieving such integration. Depending on the size and complexity of the actions, the more minor actions will not require the same level of effort at integration. More detailed recommendations for integration are provided in Chapter 3 under "Integrating Environmental Permitting into the NEPA/CEQA Compliance Process".

In addition, this chapter explains how to integrate the CALFED agencies' commitment to adaptive management into the NEPA and CEQA compliance process. Use of adaptive management can result in better projects and better mitigation strategies, and can help with decision making where there is uncertainty about a project or its impacts.

The recommendations provided in this chapter are straightforward and primarily address project timing and design. They are summarized in the following statements.

Timing:

- Plan for compliance early in the project's development.
- Begin coordinating with agencies early in the process.

Project design:

- If at all possible, design your project to address multiple CALFED objectives.
- Use adaptive management to address uncertainties.

More substantially, the recommendations are:

1. Participate in early agency consultations and establish a multi-agency team to assist in regulatory compliance.

2. Prepare a statement of purpose and need.

3. Conduct a preliminary assessment to identify any environmental, physical, or policy constraints to project implementation.

4. Prepare a preliminary description of the proposed project and alternatives.

5. Work with the multi-agency teams and CALFED program managers to identify how the proposed project can address multiple CALFED objectives.

6. Prepare an environmental compliance strategy, including strategies for integrating environmental permitting into the NEPA/CEQA process, incorporating adaptive management into the process, grouping projects when appropriate, and optimizing tiering opportunities.

7. Involve the public.

8. Prepare a well-defined project description.

9. Identify areas of uncertainty or controversy related to the project objectives or impacts, and develop an adaptive management strategy to address these uncertainties.

10. Identify any general permits that may apply to the project.

11. Complete environmental compliance documentation and submit documents in coordination with the appropriate regulatory agencies.

12. Use the regulatory compliance strategies adopted by the CALFED agencies to make it easier to complete appropriate regulatory compliance processes.

13. Adhere to all environmental commitments during project implementation, and provide data to CALFED.

Each of these recommendations is described in more detail below. They are presented here in the chronological order in which they generally would be followed. However, for many projects, some steps will be taken concurrently, while others (particularly development of the proposed project description and alternatives) may be undertaken iteratively. The following discussion generally refers to the process of preparing an environmental impact statement/ environmental impact report (EIS/EIR) to comply with NEPA and CEQA. However, NEPA and CEQA also provide for other types of environmental documents to achieve compliance. The recommendations below generally apply to all other types of documents but all recommendations may not be applicable. The recommendations do not apply to categorical exclusions and categorical exemptions.

RECOMMENDATIONS FOR COMPLIANCE

1. PARTICIPATE IN EARLY AGENCY CONSULTATIONS

The project proponent or proponents should consult with appropriate agencies early in the project process regarding the types of activities planned. If the project proponent consults with the agencies before submitting applications, it will be easier to develop methods to simplify and streamline permitting and integrate the permitting processes into NEPA/CEQA compliance. As part of this effort, the project proponent should begin to identify the similarities and differences between compliance requirements for the various permits that may be needed (for example, definitions of existing conditions, project scope, alternatives, and impacts). By identifying these similarities and differences, the project proponent will help ensure that different regulatory requirements are addressed effectively in one process with minimal redundancy.

For difficult or complex permitting issues, a CALFED permit coordinator should be consulted to assist in this effort. The permit coordinators are CALFED staff members who oversee environmental compliance for CALFED projects. The permit coordinator's role is to assist in developing strategies for integrating environmental review and permitting processes and to help project proponents complete those processes. Permit coordinators also work with other CALFED program managers to coordinate among the various CALFED projects and to ensure that projects meet the CALFED agencies' environmental commitments. They can provide a link to the CALFED Science Program so that project proponents can get the assistance they need to integrate adaptive management into the development of their projects.

Project design should remain flexible if possible so that the project proponent can modify project design and operations to avoid impacts and therefore avoid triggering regulatory compliance requirements. The issuance of permits at later stages of a project can be simplified if the project proponent defines the project early in the process in ways that identify and overcome barriers to permitting.

For larger or more complex projects, a multi-agency review team should be formed very early in the process. A more dedicated and sustained effort will be needed for these projects because more issues must be addressed and the issues are more complex. If project proponents believe they need a team, they can contact the Environmental Compliance Branch of CALFED, which will assist in forming a team of representatives from each principal regulatory agency that has authority over a proposed project. The regulatory review team can assist with all the steps in environmental regulatory compliance, including:

- preparing an overall environmental compliance strategy for a proposed project;
- developing the purpose and need statement;
- identifying ways in which a project developed under the purpose and need statement can achieve multiple CALFED objectives;

- defining existing conditions;
- defining the no-action alternative and the action alternatives;
- defining the range of alternatives to be analyzed;
- establishing the range of resource issues to be addressed in the environmental document;
- selecting analysis methods and tools (e.g., appropriate models);
- defining mitigation measures;
- consulting with CALFED's Science Program and developing adaptive management strategies to deal with any uncertainties regarding project effectiveness, project impacts, or mitigation measures;
- facilitating the completion of environmental review for projects, and
- ensuring that processing and mitigation requirements are applied consistently.

The team can continue to work on the project once environmental review is complete and implementation starts; tasks in this phase can include:

- ensuring that mitigation requirements are completed,
- evaluating the results of implementing the adaptive management strategy and determining whether any changes are needed, and
- using the experience gained with the completion of each project to develop more efficient strategies for completing subsequent projects.

2. Prepare a Statement of Purpose and Need

A statement of purpose and need should be prepared when the proponent has a goal in mind and is actively preparing to make a decision on one or more alternative means of accomplishing that goal. Sometimes known as the "project objectives", the statement of purpose and need is important because it explains why the project proponent is undertaking the proposed action and what objectives the project proponent intends to achieve by that action.

To develop the purpose and need statement, the project proponent must first identify the problem to be addressed or the opportunity to be seized. Then the specific objectives of the project—what the project proponent wants to accomplish or achieve with the project—are

identified. This information constitutes the project's purpose and need. The proposed action may have multiple purposes and thus require the preparation of a complex statement of purpose and need. Project proponents are encouraged to work closely with CALFED program managers and with the multi-agency team when developing the purpose and need statement to determine whether a proposed action can serve multiple CALFED objectives. See Attachment 1 for recommendations on developing a statement of purpose and need and for an example of the process of developing a statement of purpose and need for a CALFED action.

The Council on Environmental Quality's (CEQ's) NEPA guidelines specify that a statement of purpose and need for a NEPA-compliance document should be brief (not much longer than a paragraph). The guidelines direct that the statement should serve as an important screen for determining what reasonable alternatives exist to resolve the identified problem or seize the identified opportunity. Care must be taken to ensure that the statement provides an objective presentation of, rather than a justification for, a specific project. A purpose and need statement will generally allow for a range of reasonable alternatives. If a purpose and need statement appears to allow only one solution, it should be re-examined to make sure that it is not precluding reasonable alternatives.

If a CWA Section 404 permit will be required for a project, it is particularly important that the project proponent provide a well-considered purpose and need statement because the analysis and screening of alternatives for Section 404 permitting are strictly defined (see "Integrating Environmental Permitting into the NEPA/CEQA Compliance Process" in Chapter 3). For this and other reasons, the agency review team should assist in the development and review of the purpose and need statement before it is finalized.

3. Conduct a Preliminary Assessment to Identify Any Environmental, Physical, or Policy Constraints to Project Implementation

Project proponents should conduct a preliminary analysis to determine whether the project's implementation might be limited by physical characteristics of the project site or conflict with other CALFED programs or objectives. Such an analysis—often called a preliminary constraints analysis—should be conducted for each CALFED action early in the project development process. The analysis should include an assessment of the physical features of the proposed project site to identify environmental resources and concerns specific to the site based on a preliminary understanding of the basic project features and to anticipate the environmental permitting and compliance requirements associated with it. At a minimum, the assessment should include preliminary surveys of the site for characteristics that could constitute barriers to project implementation, such as wetlands, endangered and threatened species and their habitats, cultural resources, and hazardous waste sites. The preliminary survey information could be used to identify potential areas of concern and areas to be avoided on a particular site. It could also alert project planners to the need to consider alternative sites.

In addition to the preliminary survey information, the constraints analysis should include an evaluation of whether alternatives could conflict with or have redirected effects on other CALFED programs or objectives.

4. Prepare a Preliminary Description of the Proposed Project and Alternatives

Based on the purpose and need statement prepared earlier and information from the preliminary constraints analysis, the project proponent should develop a preliminary description of the proposed project and alternatives. The proposed project and alternatives should represent a reasonable range of alternatives for achieving the stated purpose and need. The development of alternatives should focus on ways to avoid or minimize environmental effects identified during the preliminary constraints analysis. If the project will require Section 404 permitting, special attention should be paid during this stage to the direction given in the CWA Section 404(b)(1) guidelines regarding ways to define practicable alternatives and allowable reasons for screening out alternatives. The multi-agency review team should be involved in formulating the proposed project and alternatives to ensure that the concerns of agencies are appropriately addressed.

5. Work with the Multi-Agency Teams and CALFED Program Managers to Identify How the Project Can Address Multiple CALFED Objectives

As mentioned above in recommendation 2, "Prepare a Statement of Purpose and Need", the project proponent should attempt to identify ways in which an action can address multiple CALFED objectives. At a minimum, the project proponent should select alternatives that are consistent with other CALFED programs or objectives. If the actual purpose and need statement does not identify multiple CALFED objectives, the project proponent can work with the multi-agency teams and CALFED program managers to determine whether there are project alternatives that can provide benefits for other CALFED programs or objectives.

6. Prepare an Environmental Compliance Strategy

The project proponent can use the preliminary constraints analysis and the preliminary description of the proposed project and alternatives to prepare a refined environmental compliance strategy in consultation with a CALFED permit coordinator and the multi-agency team. The objective of developing the strategy is to minimize the time and effort needed to comply with each requirement and to ensure that compliance with other regulatory processes is integrated.

One of the first steps in assessing how to comply with appropriate environmental laws and regulations is to address NEPA and CEQA requirements. After NEPA and CEQA

compliance needs have been determined, the project proponent should identify the other environmental laws and regulations that require compliance based on the particular resources affected, as presented in the preliminary constraints analysis. At this stage, the project proponent can also develop a realistic environmental compliance schedule that can be incorporated into the overall project implementation schedule. Completing a single application form for the project may also help to identify an appropriate compliance strategy (see "Single Application Form" below).

INTEGRATE PERMIT AND AUTHORIZATION REQUIREMENTS INTO THE NEPA/CEQA PROCESS

As described above under recommendation 1, "Participate in Early Agency Consultations and Establish a Multi-Agency Team to Assist with Regulatory Compliance", a primary component of an environmental compliance strategy is a plan for integrating the requirements of the other environmental laws and regulations into the NEPA/CEQA process. Suggestions for how best to accomplish this integration are provided in Chapter 3 in Tables 1 and 2 and the corresponding text under "Integrating Environmental Permitting into the NEPA/CEQA Compliance Process". In general, attention should be paid to defining existing conditions, the proposed project and alternatives, the no-action or no-project alternative, and the scope of analysis to be undertaken in the environmental document.

INCORPORATE SCIENCE AND ADAPTIVE MANAGEMENT INTO THE PROCESS

One of the implementation policies CALFED agencies have agreed to use is the application of science and adaptive management. The environmental compliance strategy for a project should include peer review of studies, reports, monitoring plans, and other documents as needed. The project proponent can work with the Science Program staff to identify the points in the process where scientific peer review should be included.

As the environmental compliance strategy is developed, the project proponent should identify areas of uncertainty or controversy, or areas in which additional information could lead to improved decision making. (See "9. Identify Areas of Uncertainty or Controversy Related to the Project Objectives or Impacts, and Develop an Adaptive Management Strategy to Address These Uncertainties" on page 2-10.) The necessary steps should be integrated into the environmental compliance strategy to enable the project proponent to obtain the information that will aid in decision making in these areas now or in the future. This implementation policy does not ensure that decisions on permits are free of uncertainty, but is intended to ensure that a reasonable attempt to overcome any uncertainty will be incorporated into the compliance process.

GROUP PROJECTS

CALFED actions may be proposed in groups where appropriate. When proposed actions are interdependent and interrelated, depending on the regulations and agencies involved, the agencies may consider the actions to be one project and may assess them in a single regulatory process. This grouping can save both time and budget by reducing the number of separate permit applications that must be prepared and negotiations that must be completed. However, if grouped actions are not interdependent and interrelated, regulatory agencies may consider them separate actions and may require separate applications and permits. Furthermore, grouping actions in this fashion may lessen the potential for permit coordination that exists for the separate actions and may increase the amount of time needed to complete regulatory compliance.

For a regulatory agency to more easily authorize a particular action, the project proponent should inform the regulatory agency why implementation of that action needs to be linked with implementation of other actions. Because of the complexity involved, the project proponent should make decisions about grouping or splitting up actions when it is developing the environmental compliance strategy.

PREPARE TIERED ENVIRONMENTAL COMPLIANCE DOCUMENTS

CALFED agencies have entered into several programmatic environmental compliance documents from which project-specific compliance will be tiered. These documents include:

- the PEIS/EIR, for compliance with NEPA and CEQA;
- the Multi-Species Conservation Strategy (MSCS), for compliance with FESA, CESA, and the Natural Community Conservation Planning Act (NCCPA);
- a programmatic Coastal Zone Management Act consistency determination;
- a programmatic memorandum of understanding (MOU) for compliance with CWA Section 404; and
- a programmatic MOU for compliance with CWA Section 401.

These documents provide important environmental compliance benefits for next-tier projects but can also result in some changes from the way an agency might have complied previously with environmental laws. The use of these documents for next-tier projects is described under each individual environmental process in Volume 2 of this guide. Chapter 3 also includes information on how a NEPA or CEQA document should tier from the CALFED PEIS/EIR.

7. INVOLVE THE PUBLIC

Early in the environmental review process, the project proponent should solicit the views of and suggestions from landowners, local governments, tribes, and other stakeholders and from the general public. While both NEPA and CEQA generally include formal scoping and notice requirements, project proponents are encouraged to move beyond the normal requirements and actively engage the public and stakeholders. All of the following methods can be used to inform the public and stakeholders about a specific project:

- press releases,
- newsletters,
- announcements,
- presentations at stakeholders' or local watershed working groups' meetings or at other interest group functions, and
- meetings with adjacent landowners and other individuals or groups known to be interested in the proposed project.

The project proponent can more effectively scope out relevant issues for the environmental review process and obtain support for an action if it solicits input at public workshops before committing resources to a particular alternative or method of analysis.

8. PREPARE A WELL-DEFINED PROJECT DESCRIPTION

Before proceeding far into the environmental review process, the project proponent should refine the description of the proposed project, taking into consideration the issues raised through public input and early agency consultation and the overall compliance strategy for the project. Project descriptions should be flexible during early consultations with agencies, but changing the project description later in the process can significantly delay environmental compliance and permitting. The more the description of the proposed action changes after environmental review or permitting has started, the longer the compliance process will be delayed; additional environmental analysis may be needed and permit applications may have to be amended. Changes to the description of the proposed action also can lead to the identification of impacts and environmental constraints not previously identified. Further definition of the project description may lead to the need to perform an additional constraints analysis and develop a more refined environmental compliance strategy, as described above.

9. Identify Areas of Uncertainty or Controversy Related to the Project Objectives or Impacts, and Develop an Adaptive Management Strategy to Address These Uncertainties

The CALFED agencies are committed to addressing areas of uncertainty through adaptive management. Adaptive management is defined as using and treating actions as partnerships between scientists and managers, designing those actions as experiments with a level of risk commensurate with the status of the species involved, and bringing science to bear in evaluating the feasibility of those experiments. Much attention has been focused on using adaptive management to guide overall program implementation; however, project proponents should not overlook opportunities to use adaptive management as an effective approach to environmental compliance for individual projects. Where there is a lack of scientific information regarding impacts or mitigation measures, the project proponent can work with the CALFED Science Program and permit coordinators to identify studies or monitoring that can be conducted to reduce the areas of uncertainty. These types of studies can be used to refine mitigation for a project over time, especially when a project has ongoing operational impacts. They can also be used to guide future decisions on similar projects.

10. Identify Any General Permits That May Apply to the Project

Several permitting agencies have established streamlined processes for projects that meet particular criteria (see Volume 2 for details). These agencies are authorized to issue general permits that have less detailed application requirements and shorter approval processes than standard permits. However, there are often conditions associated with these streamlined processes. Some conditions require early coordination or limit the extent of impacts allowed. By developing an environmental compliance strategy early in the development of a project, the project proponent can often make changes to the project that qualify it for an expedited review and can consult with regulatory agencies early in the process. (CALFED is working to develop additional streamlined processes for general or unified permits. See the CALFED website, www.calfed.water.ca.gov, for updates.)

11. Prepare and Complete Environmental Documents and Permits in Coordination With the Appropriate Regulatory Agencies

The assistance of the multi-agency review team and permit coordinator should be obtained in coordinating, preparing and completing environmental documents for NEPA/CEQA compliance and applications for permits and authorizations from regulatory agencies. The multi-agency review team should review relevant parts of environmental documents as they are prepared. This will facilitate the NEPA/CEQA processes by assuring that the draft environmental documents address the needs of their agencies. Information developed for the environmental

documents should also then be useful for completing required permits. By using this process, the multi-agency team members' review of the public comment draft environmental document should be facilitated, and the need to comment on the draft document should be minimal or nonexistent. The multi-agency review team should also review the lead agency's responses to comments and changes made to the environmental document to respond to comments about resources within their authority. This will ensure consistency of the final environmental document with the statutory authority of the regulatory agencies. (Refer to Volume 2 for descriptions of the specific steps for completing environmental documents for NEPA/CEQA compliance and for completing the processes for obtaining permits and other agency approvals.)

As mentioned earlier, the CALFED agencies have committed to implementing the program using adaptive management. Therefore, in formulating mitigation measures for a proposed project, a completely prescriptive approach is not appropriate. Project proponents should work with multi-agency teams to formulate more flexible mitigation approaches consistent with an adaptive management approach. Such an approach could include measurable mitigation objectives, a defined initial mitigation approach, monitoring protocols, and a process for modifying the mitigation approach based on monitoring results.

12. USE THE REGULATORY COMPLIANCE STRATEGIES ADOPTED BY CALFED

The CALFED agencies are committed to facilitating completion of the permitting process. The agencies have signed a Permit Clearinghouse MOU that details the steps they are taking to establish a permit clearinghouse to coordinate and expedite permit applications for all CALFED programs. The MOU is available on the CALFED website at http://calfed.ca.gov/. Some of its most important provisions are explained below.

PERMIT COORDINATORS

As described above in recommendation 1, CALFED's strategy for facilitating environmental compliance includes using a multi-agency team of regulatory compliance experts and permit coordinators within CALFED to help project proponents develop environmental compliance strategies and complete the environmental review and permitting processes. For more information on the roles of these permit coordinators and multi-agency teams, see recommendation 1, "Participate in Early Agency Consultations".

SINGLE APPLICATION FORM

CALFED is currently investigating the feasibility of using a single application form for environmental permits. Many CALFED projects will require compliance with a variety of regulations. One way to simplify the presentation of information necessary to process permits for CALFED projects is to develop a single form that would provide the initial information

needed for the regulatory and permitting processes. Both the State of Washington and the Association of Bay Area Governments/San Francisco Estuary Project have developed joint aquatic resource permit applications (JARPAs). The JARPAs used in both Washington and the San Francisco Bay Area have proven to be successful in facilitating the completion of regulatory processes.

PROJECT AND PERMIT TRACKING SYSTEM

CALFED is developing a system to track expenditures, schedules, and environmental compliance for all CALFED-funded projects. As part of this system, a permit tracking system may be developed to assist with permit coordination. This system would be a database with information about all CALFED projects, including a list of the permits required for each project, implementation schedules, and the current status of all permitting processes. The permit coordinator(s) could use the system to track progress against schedules, ensure that all necessary permits are being obtained, and help develop strategies for grouping actions. The permit tracking system would also assist regulatory agencies with implementation schedules and allow them to view upcoming workload demand. Furthermore, it could be used to report progress to implementing entities and to help identify where scheduling conflicts may cause regulatory bottlenecks. This system would also allow stakeholders and the general public to monitor implementation of CALFED projects.

ISSUE RESOLUTION ASSISTANCE

The CALFED agencies have agreed to work to identify and resolve issues as early as possible and at the lowest staff level possible. They have encouraged their staff members to use existing issue-resolution processes where possible. However, in the event that an issue cannot be resolved in a timely manner, the CALFED permit coordinators can offer assistance. This can include providing facilitation, bringing in technical or scientific review, or seeking non-binding input from the CALFED Management Group.

A project proponent who is interested in assistance can contact the program manager or CALFED permit coordinators. The project proponent should be prepared to explain the issue, what steps have been taken to resolve the issue, whether any existing issue-resolution process has been or could be used, and what assistance is desired. Please note that nothing in this process is intended to supplant or delay existing issue-resolution processes or to change agency authorities.

13. ADHERE TO ALL ENVIRONMENTAL COMMITMENTS DURING PROJECT IMPLEMENTATION, AND PROVIDE DATA TO CALFED

When the project is implemented, the project proponent will need to ensure adherence to the mitigation commitments made in the environmental documents, the requirements called for

in permits, and the monitoring and evaluation included in the adaptive management planning for the project. The project proponent will need to provide CALFED with any project tracking and monitoring data that is requested.

Go to Chapter 3